

*REMARKS/ARGUMENTS**The Pending Claims*

Claims 17-22, 25-29, 38, 39, and 41-64 currently are pending and subject to examination.

Amendments to the Claims

The claims have been amended to point out more particularly and claim more distinctly the invention. In particular, claim 38 has been amended to incorporate the subject matter of claim 40. In view of the amendment to claim 38, claim 40 has been cancelled and the dependency of claims 41 and 42 has been changed accordingly.

New claims 51-64 have been added and are supported by the specification at, for example, page 8, lines 1-29, and page 34, line 10 through page 35, line 2.

No new matter has been added by way of these amendments.

Discussion of Rejection Under 35 U.S.C. § 102(e)

In the Advisory Action, the Office indicates that if the claim amendments set forth in the “Reply to Office Action” dated May 26, 2009 are entered, the rejection of claims 17-23, 26, and 28 as allegedly anticipated by U.S. Patent 6,893,866 (Westaway et al.) (“the ‘866 patent”) will be maintained. In addition, the Office contends that claim 38 will be rejected under 35 U.S.C. § 102(e) as allegedly anticipated by the ‘866 patent.

Claim 17 is directed to a method of immunizing an animal, which method comprises administering an isolated nucleic acid encoding an infectious attenuated Kunjin virus to an animal, thereby eliciting a protective immune response to a West Nile Virus in the animal. Applicants respectfully submit that the ‘866 patent does not disclose West Nile Virus at all, much less a method comprising eliciting *a protective immune response to a West Nile Virus*, as recited in claim 17. Accordingly, the ‘866 patent does not disclose or suggest the subject matter of pending claim 17 and claims depending therefrom.

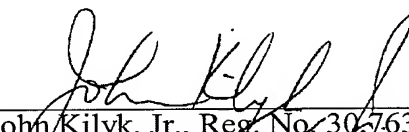
As amended, claim 38 is directed to a method of inducing an immune response in an animal, which method comprises administering an isolated nucleic acid encoding an infectious attenuated Kunjin virus comprising at least one attenuating mutation to an animal, thereby eliciting an immune response to at least another flavivirus in the animal. The '866 patent is directed to a gene expression and delivery system which includes, as essential features, a first vector and a second vector. Neither of these two vectors is an isolated nucleic acid encoding an infectious attenuated Kunjin virus, much less an isolated nucleic acid encoding an infectious attenuated Kunjin virus *comprising at least one attenuating mutation*, as recited in claim 38 and claims depending therefrom. Accordingly, the '866 patent does not disclose or suggest a method comprising administering an isolated nucleic acid encoding an infectious attenuate Kunjin virus comprising at least one attenuating mutation, as recited in claim 38 and claims depending therefrom.

In view of the foregoing, Applicants respectfully submit that the '866 patent does not anticipate the invention recited in the pending claims, and the rejection under Section 102(e) should be withdrawn.

Conclusion

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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